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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/795,824	03/08/2004	Steven R. Coven	89931	2779

24628 7590 10/06/2005

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EXAMINER	
BOLES, DEREK	

ART UNIT	PAPER NUMBER
3749	

DATE MAILED: 10/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/795,824	COVEN	
	Examiner	Art Unit	
	Derek S. Boles	3749	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *6/17/04*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-27* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-27* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *08 March 2005* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *6/17/04*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

It has been held that the recitation that an element is "adapted to" perform a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchison*, 69 USPQ 138.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claim(s) 1, 2, 7, 8, 11-13, 22 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chaurushia et al. (6,607,573) in view of Hull (4,590,847). Chaurushia et al. discloses all of the limitations of the claim(s) except for adjustable supports. Hull discloses the presence of adjustable supports. See element **50**. Hence, one skilled in the art would find it obvious to modify the system of Chaurushia et al. to include the adjustable supports of Hull for the purpose of increased stability. Regarding claim 2, see **22** of Chaurushia et al. Regarding claims 11-13, see **42** of Chaurushia et al.

Claim(s) 3-6, 9, 10 and 19-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chaurushia et al. in view of Hull and in further view of Nordlin (5,334,000). Chaurushia et al. in view of Hull discloses all of the limitations of the claim(s) except for a flange. Nordlin discloses the presence of a flange. See **74**. Hence, one skilled in the art would find it obvious to modify the system of Chaurushia et al. in view of Hull to include a flange of Nordlin for the purpose of increased support.

Claims 14 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chaurushia et al. in view of Hull. It is well-known in the art of HVAC to design a fan controlled by a switch. Thus, it would have been obvious to one of ordinary skill in the art to incorporate the features of fan controlled by a switch into the system of Chaurushia et al. in view of Hull for the purpose of improved safety.

Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chaurushia et al. in view of Hull. It is well-known in the art of HVAC to design a fan with variable speed. Thus, it would have been obvious to one of ordinary skill in the art to incorporate the features of a fan with variable speed into the system of Chaurushia et al. in view of Hull for the purpose of increased applicability.

Regarding claim 18, Chaurushia et al. in view of Hull discloses all of the limitations of the claim except for the exhaust aperture being in the rear. However, since the applicant has failed to establish any criticality or synergistic results which are derived from the recited configurations, these limitations are considered a matter of obvious design choice. Thus, the applicant's design configurations would have been an obvious improvement to one of ordinary skill in the art with regard to the apparatus disclosed in Chaurushia et al. in view of Hull.

Claims 16 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chaurushia et al. in view of Hull. It is well-known in the art of HVAC to design a fan motor with a surge protector. Thus, it would have been obvious to one of ordinary skill in the art to incorporate the features of surge protection into the system of Chaurushia et al. in view of Hull for the purpose of increased durability.

Claim(s) 25-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chaurushia et al. in view of Hull and in further view of Wilkins (3,912,473). Chaurushia et al. in view of Hull discloses all of the limitations of the claim(s) except for a filter support on the flange. Wilkins discloses the presence of a filter support on the flange. See claim 1. Hence, one skilled in the art would find it obvious to modify the system of Chaurushia et al. in view of Hull to include a filter support on the flange of Wilkins for the purpose of more secure attachment.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 15 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 15 recites the limitation "said switch" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The provided references are representative of the state of the art that is applicable to the applicant's invention. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Derek S. Boles at (571) 272-4872.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http//pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

D.S.B.

DEREK S. BOLES
PRIMARY EXAMINER
GROUP 3700

10/3/05